

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2008-02268

BOODRAJ ST. CLAIR

CLAIMANT

AND

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

CV 2008-02269

GEETA ST. CLAIR

CLAIMANT

AND

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

APPEARANCES:

MR RAVI RAJCOOMAR AND MS ALISA KHAN FOR THE CLAIMANTS

MS MARY DAVIS HOLDING FOR MRS JOSEFINA BAPTISTE-MOHAMMED INSTRUCTED BY MS

FLORENCE RAMDIN FOR THE DEFENDANT

DATED: 27 February 2013

JUDGMENT

1. These two matters were consolidated. The claimants are husband and wife. On 12 July 2004, they were at their home in the night. Police came into their premises. The claimants were shot and injured. The claimant, Boodraj St. Clair, had a licensed firearm. He fired at the police also. At issue was who fired first and how did the events unfold. The claimants sued for assault and battery and trespass to the person. They say this was on account of the alleged negligent, deliberate or reckless firing of weapons by the police.
2. The claimants gave evidence on their own behalf. Boodraj St. Clair gave evidence that he was a contractor and holder of a licensed firearm at the time. He was awakened by the sound of gunshots about 1:45 am. He heard rapid footsteps and men saying "Spanish, open the fucking door, police." A few seconds later, the front door came crashing down. He was unsure who the men were since the persons did not identify themselves. His wife, minor sons and himself remained locked in a bedroom in which they had all been sleeping. He shouted to the persons that he was the holder of a licensed firearm. He said he told the men to identify themselves properly. The persons continued to bang at the bedroom door and then shot at it. He then discovered that his wife was shot in the leg.

3. He said he told the men, "All yuh is police, and all yuh shoot my wife? She is bleeding badly". He said fearing for his and his family's safety he took his shotgun from his gun box, loaded it and discharged 4 shots through the back wooden door of his bedroom to scare the intruders away. The shooting stopped and then he heard footsteps running to his bedroom from where shots began to penetrate into his room. A few seconds later, his bedroom was broken into. Through the opening he saw a man pointing a gun at him. He was about 12 feet away wearing a police vest with the words "POLICE" written on it. The man told him to put his gun down. He put the gun on top of the wardrobe and put his two hands up where the man could see them. Mr St. Clair then slowly pushed his hands through the open door. The man then fired several shots at him hitting both of his legs. One of the men then held him, pulled him down the steps outside and threw him on the ground.

4. The men then put a gun to his head asking for guns and ammunition. They threatened him. He was dragged to the gate and put on the back of a pickup van. A few seconds later his wife was thrown next to him. They were taken to the Arima Hospital. He was transferred to Port of Spain General Hospital until he was discharged on 14 July 2004. He was then taken to the Belmont Police Station where he was eventually allowed to leave from. He said he had bruises and lacerations, pain, multiple bullet wounds to the left and right lower limbs and groin. Surgery was done to remove the bullets. He was never charged with any offence.

5. His wife Mrs St. Clair's, account of the events are in similar terms.

6. She said after she was shot she was ordered to walk to the van or she would be shot. One of the men put a gun to her head and told her to walk. Her young sons were screaming and hysterical.

7. She said she was shot 6 times. She was shot in her stomach, twice in her right leg, twice in her right hand, and once in her upper back. She had emergency surgery. She spent 17 days in the hospital awaiting surgery on her leg. The pain was unbearable. She went to a private hospital. She had spent 6 months lying in bed. She said her life has changed completely.

8. The police version was quite different. It came from officers Al Edwards, Terrence Hamilton and Reynold Pope. They were part of a number of officers of the Firearms Interdiction Unit who were detailed for duty. They went to the claimants' home. The gate to the premises were closed, but not locked. They had a search warrant for arms and ammunition. There was a street light. An officer, PC Pitt, opened the gate and officers went in. A large black dog attacked them and PC Pitt discharged one round and the dog ran. They secured the perimeter of the house. Corporal Edwards said he called out to the occupants by saying, "St. Clair, Police Officers, we have a warrant to search

for arms and ammunition. Open the door". They went knocking on a door. A voice said, "who is that?" He replied "we have a warrant to search for arms and ammunition. Open the door". The voice replied, "ah coming".

9. Officer Edwards says he waited a while but the door was not opened. He called out again and the male voice said "ah coming". He heard movements in the bedroom but the door was not opening.

10. He became suspicious. He went to the northern side. Time passed. He called out again. The male voice said "I have a licensed firearm". Officer Edwards said "if you have a licensed firearm, put it down, open the door and come out". The voice replied "I coming".

11. He turned sideways when he was shot and fell to the ground. At that time Edwards said "d man shoot me". He fired one round. He then heard several rounds from the bedroom and from the police. He heard PC Pitt say he got shot.

12. The versions of PC Hamilton and PC Pope were in similar terms.

Cross Examination

13. Neither side's cross examination brought out significant inconsistencies. The witnesses essentially stuck to their versions contained in their witness statements. There were a few significant bits of evidence of note, however.

14. Boodraj St. Clair said the loud voices were heard after the persons were already in the gallery. He said the incident happened very quickly, within a minute and a half. He expected the officers to identify themselves properly and to call by the gate. He said after the dog was shot he was taking care of his family's safety. He noted his gun was already loaded. By this he meant that there were four cartridges in the chamber. He took out one from the chamber and put it in the breech. He said he fired 4 shots. He was sure he didn't shoot his wife by mistake since he had a shot gun and she was hit by a 9 mm gun. In re-examination he said that around the time there were many reports of persons dressed as police officers breaking into people's homes so he had to be on the safe side. Geeta St. Clair said she heard footsteps around the house.

15. Terrence Hamilton noted the first shot was fired at a dog and he couldn't recall if the shot was fired before anyone called "police, police". The first shot was by the police. He noted several officers were dressed in plain clothes including Edwards, Pitt and Pope.

He noted the first to enter the house was Cpl Edwards. He gave his statement four years after the incident. He opened the bedroom door from the western side and saw a man facing east. He had a firearm. The man turned in his direction. He was fearful for his life and he fired. He said he did not know what to expect. He denied Boodraj St. Clair had put the gun down.

16. PC Pope said he received information the day before and he had not done several weeks of surveillance.

17. Cpl Edwards said he never said "Spanish open up". He called out on several occasions. He said the incident lasted 9 to 10 minutes. This, to the court, seemed somewhat long for these events to unfold. I found it unlikely that the police would have taken so long to move in.

18. It was based on these versions that I had to make findings on what the facts were.

19. From the evidence, I found that the police fired the first shot, at the dog.

20. The claimants must have been scared and unsure. It is quite possible that the claimant, Mr St. Clair, was not sure it was the police. This is because most of the officers were not in uniform and there could have been a genuine fear of who the persons were notwithstanding that they may have said police. I accepted his evidence that he was fearful that the men may not have been police officers given that he was aware of a spate of robberies around the time where persons were impersonating police officers. The fact that there seemed to be several persons around the house may be significant.

21. Accordingly, given his fear, I found it likely that he would have fired a shot.

22. The police outnumbered the claimants in terms of fire power from their weapons. Each of them would have been armed. The question arises whether there was excessive force used by the police to repel the attack by the first claimant. Given their relative strength and the first claimant's statement that he had a licensed firearm, they probably could have acted in a different manner before deciding to fire or before deciding to fire in the manner in which they did.

23. It is also more likely than not that the first claimant shot one of the officers as he fired.

24. A key question was, did Officer Hamilton, seeing the claimant with the gun, decide that his life was in danger and therefore fired pre-emptively? The most reasonable and plausible explanation of the events lies somewhere between the versions of both sides. Having entered the compound and shot at the dog, it is likely that the police acted quickly and broke down the front door and fired shots at the bedroom door. It is not likely that they would have waited around for 9 minutes as suggested by Officer Edwards calling out on a number of occasions. If they did that, they risked giving the occupants an opportunity to mount an attack on them given that they were in search of firearms and ammunition. However, having called out, "police", it is likely that they would have interpreted any delay on the part of the occupants as opening themselves to the risk of an attack on them. At the same time, Mr St. Clair, thinking of an armed assault by possible robbers, probably would have been delaying his response. It is in such circumstances likely that both St. Clair and the police would have acted quickly to prevent an attack. Given these facts the police must have fired to gain entry.

25. It is noteworthy also that no illegal weapons or ammunition were found on the premises. If the first claimant did not have any illegal weapons, why would he decide to shoot unless he was genuinely fearful that the persons were not police officers? In this context I find the police fired shots in their attempt to gain entry as suggested by the claimants.

26. These initial shots at the door by the police connected Mrs St. Clair. It is likely that Boodraj St. Clair then responded with his firearm fearing that this was an assault by unknown gunmen. After this, the police returned fire and then shot Boodraj St. Clair in self defence. This appears to be the most plausible explanation given the completely different versions given by both sides.

27. From the claimants' version the issue of a deliberate, revenge attack on Mr St. Clair arose for consideration given that he had shot at the officers. Did the police seeing that two officers were shot decide to take revenge? I find this unlikely. Boodraj St. Clair's evidence is after he had surrendered his weapon that he was shot. I do not accept this aspect of his evidence. To accept that would suggest that the officers acted out of pure revenge. Based on my assessment of their evidence and the demeanour of the police officers, I do not accept that that is how the events unfolded. I think it more likely that there was a degree of recklessness in how they managed the events surrounding the entry into the premises.

28. Was Mrs St. Clair injured in cross-fire? I think it more likely than not that she was injured in the initial firing by the police. This suggests a lack of sufficient care in the discharge of their weapons in all the circumstances upon seeking to gain entry into the premises.

29. Another issue was, did the police call out more than once? I found the version by Cpl Edwards that he had called out several times to be less likely than the version of the claimants that the events happened quickly and that they broke the front door down shortly after saying police.

30. The police could not know then if Mr St. Clair was a bona fide holder of a Firearm Users Licence.

31. The events suggest a lack of care by the police officers in gaining entry bearing in mind that the officers had fired the first shot at the dog. Of relevance here was that the search warrant was for firearms and ammunition as opposed, for example, to illegal drugs, such as cocaine. Police officers would be concerned that a person would not destroy or conceal illegal possessions and would ordinarily seek to make a quick entry to search premises. It would be extremely difficult to conceal completely or to destroy arms and ammunition in the face of an impending request to search premises. This is different with drugs where the substance could be washed down a sink or flushed down a toilet. In the latter case, gaining quick entry would ordinarily be far more important. Given that the claimant was saying to the police that he had a licensed firearm, critical to the police would have had to be securing their persons and allowing for the search to be done. The risk of destroying or hiding arms and ammunition was small. Their entry therefore could have been done with far more restraint.

32. The events do, however, suggest that the police may have been acting in self defence in relation to Boodraj St. Clair. Having already shot Mrs St. Clair and Mr St. Clair beginning to fire at the police, they were entitled to take all reasonable steps to defend themselves from this attack. It was in this context that I found Mr St. Clair was shot. He was shot while the officers were engaged in lawful self defence notwithstanding that it was Mr. St. Clair's fear of an attack by unknown men that caused him to use his firearm. His claim, therefore, must fail.

33. Given the positioning of Mr St. Clair in relation to his wife, however, it seems likely that they could have avoided shooting her if more care had been taken while they sought to enter. I found in her case negligence and/or recklessness in relation to the circumstances of her being shot and injured.

34. The final matter concerns the damages that are to be awarded to the claimant Geeta st. Clair. The General Hospital Report dated 15 January 2009 showed Mrs St Clair was treated for gunshot wounds to the right thigh, abdomen, chest and right elbow joint. She had a penetrating wound, right axilla; penetrating wound anterior chest wall just lateral to the right breast; swollen right leg with lateral deviation; penetrating wound superior to pubic tubercle. She had to do an emergency laparotomy. She had a fractured right femur. It was noted that while awaiting surgery she discharged herself against medical advice on 28 July 2004. Dr Sieunarine's report of 18 August 2004 noted

she had abdominal surgery at the Port of Spain General Hospital and orthopaedic surgery at St Augustine Private Hospital. Dr Baboolal, a consultant psychiatrist, on 31 October 2009 reported that detailed evaluation was consistent with post traumatic stress disorder associated with the incident. By 2009, this had decreased to symptoms consistent with major depression. Dr Baboolal noted the symptoms associated with this as including anxiety, emotional numbness, re-experiencing the trauma, nightmares, difficulty with sleep, anger, 'hypervigilance'.

35. Dr Horsford's report of 8 December 2008 showed 'foot drop' had continued. Her right upper limb showed obvious evidence of ulna nerve palsy. She had difficulty driving as she could not pull her foot quickly off the accelerator, she was unable to walk fast or run due to the foot drop, difficulty wearing anything but closed shoes, difficulty doing fine movements with her right hand due to ulna nerve palsy.

36. These were clearly significant injuries which must have caused tremendous pain. They have also resulted in lasting injury to her. She has been affected psychologically and she continues to have both physical and mental effects of the injuries and events.

37. I have reviewed the several authorities cited by both sides.

38. The cases cited by the claimant were generally old cases from the 1960s and 1970s.

Such cases tend to be unreliable as a guide. More recent authorities would have been more useful since the court cannot simply accept the adjusted figures in the absence of methodology. Further, simply adjusting figures for inflation and cost of living can lead to unreasonably inflated outcomes.

39. Two more recent cases were cited by the defendant on quantum. These were

Cummings v Cpl Francois and the Attorney General, unreported, HCA 2082 of 2005 and **Almarales v Griffith, unreported, HCA 915/1975**. The injuries in those cases appear to be far less serious in terms of the number of injuries, the short term effects, and the long term effects. In **Almarales**, the injury was to the left shoulder which caused damage to the sensory and motor nerves of the left hand. She could not work in her previous job but later got work as a cashier. In **Cummings**, there was a 2 cm laceration to the lower right leg from a gunshot injury. She had no loss of amenities nor was there loss of pecuniary prospects.

40. I also examined the case of **Visham Boodoosingh v Richard Ramnarace C.A. Civ.**

68/2001, delivered 6 November 2002, per Warner J.A. which I found to be helpful.

41. The Court of Appeal upheld an award of **\$ 150,000** made by Bereaux J (as he then was) in an action for assault and battery. Loss of earnings and future medical expenses of \$132,000 and \$40,000 were also awarded. In that case, an off duty police officer had shot the respondent in the face. He suffered the following injuries as pleaded in the statement of claim: *“gunshot wounds to the right side of the face and mouth; compound fractures on the right mandible, dental avulsion and fractures; loss of several teeth; extensive scarring to the right side of the face; deformity of the angle of the mouth and lower lip; narrowing of the aperture of the mouth; loss of buccal salcus in the right lower jaw area.”*

42. It was noted that the plaintiff in **Ramnarace** was 24 years when he suffered this injury. He testified of loss of amenities, pain and suffering which he experienced. He had remained in hospital for two and a half weeks; he was unable to eat for a period of three months; the tip of his tongue was grazed; he lost front teeth; he could not eat or chew on the right side; he experienced pain and sensation when the skin on his lip **‘pulled’** along the lines of the healed wound; the skin was removed for the skin graft. He was engaged to be married and his fiancée broke off the relationship. He continued to experience pain even when he ate.

43. The injuries and circumstances of the present case appeared to be at least as serious and moreso, in my view, than the **Ramnarace** case.

44. Apart from the medical evidence tendered to the court, Mrs St. Clair also gave evidence that she cannot be in the outdoors as before, she has a lot of scars about her body from the bullet wounds, and she gets pain and cramps in her right hand due to nerve damage when she is doing simple tasks at times such as washing dishes and other household chores. The claimant is a homemaker. Thus, she is unable to perform many of the tasks she previously undertook in the home as efficiently as before, and sometimes not at all.

45. Given these significant injuries, the pain she must have endured over a long time, her need for multiple surgeries, her loss of amenities, her psychological trauma and all the circumstances, I am of the view that an appropriate award of general damages in this case is the sum of \$300,000.00

46. On the issue of special damages, there was a claim for \$25,257.00 for her nursing home care. The claimant did not specifically explain why she went to the St Augustine Private Hospital. This is particularly important as the medical report of the General Hospital noted she was discharged against advice. The best that can be surmised was that she found she was waiting too long for her surgery to her leg and as she said, she must have been traumatised from being separated from her young children, who themselves would no doubt have been traumatised from this incident. She did spend a fairly long time at the General Hospital, 17 days, awaiting surgery on her leg. It is noteworthy that she was discharged after only 2 days at the private hospital. In all of the circumstances,

it would not have been unreasonable to want to seek private medical attention having already stayed for so long at the Hospital. I will allow this claim as well. She claimed \$100.00 as the sum to replace her clothing and a total of \$5,000.00 for medication. Neither of these amounts is unreasonable.

47. I do not think this is a suitable case for an award of exemplary damages. The decision rests on the lack of sufficient care by the police in their initial attempt to get into the St. Clair home. But they too came under attack. This was not the kind of case that the court found the conduct was oppressive, arbitrary, unconstitutional, or an abuse of powers.

48. The award for Geeta St. Clair therefore is general damages in the sum of \$300,000.00 and special damages in the sum of \$30,357.00. Interest on the special damages will run at 3 percent per annum from the date of the injury on 12 July 2004 and interest on the general damages will run at 6 percent per annum from the date of the writ on 1 March 2005.

49. Costs for Mrs St. Clair are on the prescribed scale based on the award of \$330,357.00 in the sum of \$54,535.70. Given all the circumstances of Mr. St. Clair's claim, notwithstanding he did not succeed, I make no award of costs against him. His evidence

was that he was unable to reside in his home for a long time after this incident. He too was seriously injured. It caused him and his family tremendous distress and it would be unfair to make a costs order against him.

50. Finally, I wish to record that this was a most unfortunate case for both the St. Clairs and the police officers involved. Both adult occupants of the home were shot in close proximity to their children. In the course of the events also, two police officers seeking to execute a search warrant were shot by Mr St. Clair using his licensed firearm to repel what he thought was an attack by unknown gunmen. The injuries of the police officers were not as serious as the St. Clairs, but the officers too were in significant danger.

51. Police officers undertake considerable risks in their daily work and must be allowed to do their work and be as safe as possible. This decision must in no way, therefore, be read as suggesting that police officers are not entitled to use reasonable force to defend themselves in appropriate cases. In fact, the decision of the court is that in relation to the shots fired by Mr St. Clair, the police officers shot him in self defence while using reasonable force.

Ronnie Boodoosingh

Judge